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Subject : Review of the EU regulatory framework for electronic communications networks and services:

Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to and interconnection of electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services

- Political agreement

I. INTRODUCTION

1. The European Commission adopted a proposal for a Better Regulation Directive on 13 November 2007. This proposal forms part of the so-called *review package* of the EU regulatory framework for electronic communications, comprising two proposals for amending Directives (the so-called Better Regulation Directive amending the current Framework, Authorisation and Access Directives and the so-called Citizen's Rights Directive amending the Universal Service and Privacy Directives) and a proposal for a Regulation (establishing a European Electronic Communications Market Authority).

2. With its proposal for a Better Regulation Directive, the Commission aims to adjust the regulatory framework for electronic communications by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation (the market analysis procedure) and making access to radio frequencies simpler and more efficient.
3. A first examination of the proposal by the Working Party on Telecommunications and the Information Society took place under the Slovenian Presidency. On 12 June 2008, the Council held a public exchange of views on the review of the EU regulatory framework for electronic communications networks and services and took note of the presidency's progress reports on the work carried out so far in its preparatory bodies.
4. During the current French Presidency, the proposal was examined in further detail, both on the basis of a Presidency compromise text put together under the Slovenian Presidency and in relation to the European Parliament amendments adopted in its First Reading opinion on 24 September 2008.
5. The Commission adopted its amended proposal, following the first reading of the European Parliament, on 6 November 2008 (doc. 15424/08).
6. The European Economic and Social Committee (EESC) adopted its Opinion on 29 May 2008 and the Committee of the Regions (CoR) on 19 June 2008.

II. OUTCOME OF THE COREPER PROCEEDINGS

1. The text of the Presidency compromise proposal concerning the Framework Directive is annexed. This text, which reflects the results from the last WP and Coreper discussions, provides a consolidated version of the proposal for an amending Directive on the basis of the current Directive 2002/21/EC and includes all its provisions (from Article 1 to Annex I), even those for which no modifications were suggested.

2. The Coreper has reached a broad consensus on the essential features of the Commission proposal and has taken due account of the European Parliament's First Reading Opinion.

a. Specific issues for further consideration

National regulatory authorities (NRAs):

The independence of NRAs from undertakings is guaranteed in Article 3. As some delegations wished to reinforce this provision, while other delegations underlined that the NRAs should be subject to supervision if required by national constitutional law, the Presidency proposed in Coreper a compromise text which was welcomed in principle, subject to scrutiny by delegations.

Consolidating the internal market for electronic communications:

The Commission's proposal gives the possibility to the Commission to issue decision on draft measures intended to be taken by NRAs. Although few delegations support the intervention of the Commission on remedies by means of decisions, a majority of delegations opposes this provision. The Presidency therefore proposes as a compromise that the Commission should issue opinions and that NRAs should justify their decisions in case they do not follow the Commission's opinion.

Policy objectives and regulatory principles:

In order for NRAs to promote the interests of the citizens, Article 8 of the Presidency text calls upon NRAs to promote "efficient investment and innovation in new and enhanced infrastructures" (paragraph 4a(d)). This reference is, however, not supported by all delegations as some believe that it should be strengthened to provide for a clearer political signal in favour of investment sharing.

Management of radio frequencies for electronic communications services:

With regard to various references in Article 9 of the Presidency text to the "ITU Radio Regulations" and to "National Frequency Allocation Plans", few delegations still have concerns regarding the consistency between EU legislation and international and national arrangements regarding the use of radio spectrum. Another issue requiring further consideration concerns possible exceptions to the principle of technology neutrality.

b. Remaining reservations

Linguistic reservations on the text are maintained by all delegations and the Commission has reserved its overall position on the Presidency compromise proposal.

Individual reservations have been made on the following specific provisions:

- National Regulatory Authorities (NRAs) (Article 3) (footnote 8)
- Consolidating the internal market for electronic communications (Article 7) (footnote 9)
- Policy objectives and regulatory principles (Article 8) (footnote 10)
- Strategic planning and coordination of radio spectrum policy in the Union (Article 8a) (footnote 11)
- Management of radio frequencies for electronic communications services (Article 9) (footnote 12)
- Transfer or lease of individual rights to use radio frequencies (Article 9b) (footnote 13)
- Procedure for identification and definition of markets (Article 15) (footnote 14)

III. THE TASK FOR COUNCIL

The Council is therefore invited to examine the questions still under discussion in order to adopt a political agreement. The text should be sent to legal-linguists for finalisation in view of the adoption of Council's common position.

PRESIDENCY COMPROMISE PROPOSAL FOR THE

CONSOLIDATED VERSION OF THE PROPOSAL AMENDING DIRECTIVE 2002/21/EC (Framework Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas: [common to Framework, Access and Authorisation Directive]

- (1) *The functioning of the five directives comprising the existing regulatory framework for electronic communications networks and services (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services¹ ('Framework Directive'), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities² ('Access Directive'), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of the electronic communications networks and services³ ('Authorisation Directive'), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services⁴ ('Universal Service Directive'), and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector⁵ ('Directive on privacy and electronic communications')) is subject to periodic review by the Commission, with a view in particular to determining the need for modification in the light of technological and market developments.*
- (2) *In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which identified the continued lack of an internal market for electronic communications as the most important aspect needing to be addressed. In particular, regulatory fragmentation and inconsistencies between the activities of the national regulatory authorities were found to jeopardise not only the competitiveness of the sector, but also the substantial consumer benefits from cross-border competition.*
- (3) *The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. This is complemented through the establishment by Regulation [...]/.../EC of [date] of the European Parliament and of the Council⁶ of **an Group of European Regulators in Telecoms (hereinafter referred to as "the GERT")**]. The reform also includes the definition of an **efficient and coordinated** spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.*

¹ OJ L 108, 24.4.2002, p. 33.

² OJ L 108, 24.4.2002, p. 7.

³ OJ L 108, 24.4.2002, p. 21.

⁴ OJ L 108, 24.4.2002, p. 51.

⁵ OJ L 201, 31.7.2002, p. 37.

⁶ OJ C [...], [...], p. [...].

- (3b) *The aim is to progressively reduce ex ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. [...] Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition. [...]*
- (3c) *In order to ensure a proportional and adapted approach to varying competitive conditions, national regulatory authorities [...] may define markets on a subnational basis and/or lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition. [...]*
- (3d) *A key issue for the coming years in order to achieve the goals of the Lisbon Agenda is to [...] provide the conditions for efficient investments in new high speed networks that will support innovation in content-rich internet services and strengthen international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and business across the European Union. It is therefore vital to foster sustainable investment in the development of these new networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.*
- (39a) *Both efficient investment and competition should be encouraged in tandem, [...] in order to increase economic growth, innovation and consumer choice [...].*
- (44a) *The continuing market integration within the internal market for electronic communications networks and services requires better coordination in the application of the ex ante regulation as provided for under the legal framework for electronic communications.*

[for the rest, see the relevant articles]

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE, AIM AND DEFINITIONS

Article 1

Scope and aim

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community. **The framework also includes provisions on certain aspects of terminal equipment to facilitate access for disabled users.**

(4) *In order to allow national regulatory authorities to meet the objectives set out in the Framework Directive and the Specific Directives, in particular concerning end-to-end interoperability, the scope of the Framework Directive should be extended to cover **certain aspects of** radio equipment and telecommunications terminal equipment as defined in Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁷ as well as consumer equipment used for digital television, **to facilitate access for disabled users.***

2. This Directive as well as the Specific Directives are without prejudice to obligations imposed by national law in accordance with Community law or by Community law in respect of services provided using electronic communications networks and services.

3. This Directive as well as the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.

⁷ OJ L 91, 7.4.1999, p. 10.

4. This Directive and the Specific Directives are without prejudice to the provisions of Directive 1999/5/EC.

5. This Directive and the Specific Directives shall be without prejudice to any specific measure adopted for the regulation of international roaming on public mobile telephone networks within the Community.

Article 2

Definitions

For the purposes of this Directive:

(a) "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources, **including network elements which are not active**, which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

(b) "transnational markets" means markets identified in accordance with Article 15(4) covering the Community or a substantial part thereof **located in more than one Member State**;

(c) "electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

(d) "public communications network" means an electronic communications network used wholly or mainly for the provision of [...] electronic communications services **available to the public which support the transfer of information between network termination points;**

(da) "network termination point" (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;

(e) "associated facilities" means those [...] **physical infrastructures and other facilities or elements** associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service **or have the potential to do so, and [...] include inter alia [...] buildings or entries to buildings, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets.**

(ea) "associated services" means those services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so and include inter alia number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, as well as other services such as identity, location and presence service;

(f) "conditional access system" means any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

(g) "national regulatory authority" means the body or bodies charged by a Member State with any of the regulatory tasks assigned in this Directive and the Specific Directives;

(h) "user" means a legal entity or natural person using or requesting a publicly available electronic communications service;

- (i) "consumer" means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;
- (j) "universal service" means the minimum set of services, defined in Directive 2002/22/EC (Universal Service Directive), of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;
- (k) "subscriber" means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
- (l) "Specific Directives" means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive [...] **2002/58/EC of the European Parliament and of the Council (hereinafter referred to as "Directive 2002/58/EC(Directive on privacy and electronic communications)");**
- (m) "provision of an electronic communications network" means the establishment, operation, control or making available of such a network;
- (n) "end-user" means a user not providing public communications networks or publicly available electronic communications services;
- (o) "enhanced digital television equipment" means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;
- (p) "application program interface (API)" means the software interfaces between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services;

(q) "spectrum allocation" means the designation of a given frequency band for use by one or more types of radiocommunications services, where appropriate, under specified conditions;

(r) "harmful interference" means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable international, Community or national regulations;

(s) "call" means a connection established by means of a publicly available electronic communications service allowing two-way voice communication.

(17) *Radio frequencies should be managed so as to ensure that harmful interference is avoided. This basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.*

(5) *Certain definitions should be clarified or changed to take account of market and technological developments and to eliminate ambiguities identified in implementing the regulatory framework.*

CHAPTER II

NATIONAL REGULATORY AUTHORITIES

Article 3

National regulatory authorities

1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body.

2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that national regulatory authorities exercise their powers impartially, [...] transparently **and in a timely manner**. Member States shall ensure that **national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.**⁸

3a Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex ante market regulation or for resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to exercising these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 shall have the power to suspend or overturn decisions by the national regulatory authorities.

Member States shall ensure that the head of, or where applicable members of the collegiate body fulfilling that function within, a national regulatory authority referred to in the first subparagraph or his/her/their replacement may be dismissed only if he/she/they no longer fulfils the conditions required for the performance of his/her/their duties which are laid down in advance in national law. The decision to dismiss the head of, or where applicable members of the collegiate body fulfilling that function within, the national regulatory authority concerned shall be made public at the time of dismissal. The dismissed head of, or where applicable members of the collegiate body fulfilling that function within, the national regulatory authority shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.

Member States shall ensure that national regulatory authorities referred to in the first subparagraph have separate annual budgets. The budgets shall be made public.

⁸ UK, HU, PT, IT and SE have a reservation on paragraphs 3 and 3a.

3b. Member States shall ensure that the goals of the GERT in promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.

3c. Member States shall ensure that national regulatory authorities take utmost account of opinions and common positions issued by the GERT when adopting their own decisions for their national markets.

4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.

5. National regulatory authorities and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

6. Member States shall notify to the Commission all national regulatory authorities assigned tasks under this Directive and the Specific Directives, and their respective responsibilities.

- (6) *The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority **responsible for ex ante market regulation or for resolution of disputes between undertakings** is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. [...] For that purpose rules should be laid down in advance regarding the grounds for the dismissal of the head of the national regulatory authority **above mentioned** in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. It is important that national regulatory authorities **responsible for ex ante market regulation** should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this should be published annually.*

Article 4

Right of appeal

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions **effectively**. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

Pending the outcome of [...] **the** appeal, the decision of the national regulatory authority shall stand, unless [...] **interim measures are granted in accordance with national law.**

2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 234 of the Treaty.

3. Member States shall collect information on the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures taken. Member States shall provide such information to the Commission and the GERT after a reasoned request from either.

- (6a) *In order to ensure legal certainty for markets players, appeal bodies should carry out their functions effectively; in particular, appeals proceedings should not be unduly lengthy.*
- (7) *There has been a wide divergence in the manner in which appeal bodies have applied interim measures to suspend the decisions of the national regulatory authorities. In order to achieve greater consistency of approach common standard should be applied in line with Community jurisprudence. **Appeal bodies should also be entitled to request available information published by the GERT.** Given the importance of appeals for the overall working of the regulatory framework, a mechanism should be set up for collecting information on appeals and decisions to suspend decisions taken by the regulatory authorities in all the Member States and for the reporting of that information to the Commission.*

Article 5

Provision of information

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. **In particular those undertakings may also be required to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. Undertakings with significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.**

[...] **Undertakings** shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information **and shall treat the information in accordance with paragraph 3 of this Article.**

(8) *In order to carry out their regulatory tasks in an effective manner, the data that national regulatory authorities are to gather should include accounting data on the retail markets that are associated with wholesale markets where an operator has significant market power and as such are regulated by the national regulatory authority, and should also include data to enable the national regulatory authority to assess the possible impact of planned upgrades or changes to network topology on the development of competition or on wholesale products made available to other parties.*

2. Member States shall ensure that national regulatory authorities provide the Commission, after a reasoned request, with the information necessary for it to carry out its tasks under the Treaty. The information requested by the Commission shall be proportionate to the performance of those tasks. Where the information provided refers to information previously provided by undertakings at the request of the national regulatory authority, such undertakings shall be informed thereof. To the extent necessary, and unless the authority that provides the information has made an explicit and reasoned request to the contrary, the Commission shall make the information provided available to another such authority in another Member State.

Subject to the requirements of paragraph 3, Member States shall ensure that the information submitted to one national regulatory authority can be made available to another such authority in the same or different Member State, after a substantiated request, where necessary to allow either authority to fulfil its responsibilities under Community law.

3. Where information is considered confidential by a national regulatory authority in accordance with Community and national rules on business confidentiality, the Commission and the national regulatory authorities concerned shall ensure such confidentiality.

4. Member States shall ensure that, acting in accordance with national rules on public access to information and subject to Community and national rules on business confidentiality, national regulatory authorities publish such information as would contribute to an open and competitive market.

5. National regulatory authorities shall publish the terms of public access to information as referred to in paragraph 4, including procedures for obtaining such access.

Article 6

Consultation and transparency mechanism

Except in cases falling within Articles 7(9), 20 or 21, **and unless otherwise provided in the implementing measures adopted pursuant to Article 9c**, Member States shall ensure that, where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives [...], **or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4), and which have a significant impact on the relevant market**, they give interested parties the opportunity to comment on the draft measure within a reasonable period.

National regulatory authorities shall publish their national consultation procedures.

Member States shall ensure the establishment of a single information point through which all current consultations can be accessed.

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality.

- (9) *The national consultation provided for under Article 6 of the Framework Directive should be conducted prior to the Community consultation provided for under Article 7 of that Directive, in order to allow the views of interested parties to be reflected in the Community consultation. This would also avoid the need for a second Community consultation in the event of changes to a planned measure as a result of the national consultation.*

Article 7

Consolidating the internal market for electronic communications

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including insofar as they relate to the functioning of the Internal Market.

2. National regulatory authorities shall contribute to the development of the Internal Market by cooperating with each other and with the Commission **and the GERT all** in a transparent manner **so as** to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, [...] **cooperate with the Commission and the GERT to identify** the types of instruments and remedies best suited to address particular types of situations in the marketplace.

(10) *The discretion of national regulatory authorities needs to be reconciled with the development of consistent regulatory practices and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market. National regulatory authorities should therefore support the internal market activities of the Commission and those of **the GERT** [...].*

3. [...] **Except where otherwise provided in recommendations and/or guidelines adopted pursuant to Article 7a, upon completion of** the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/19/EC (Access Directive) [...], and

(b) would affect trade between Member States,

it shall [...] make the draft measure accessible to the Commission, **the GERT**, and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, **the GERT** and other national regulatory authorities thereof. National regulatory authorities, **the GERT** and the Commission may make comments to the national regulatory authority concerned only within one month [...]. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(3), (4) or (5); or

(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),

and would affect trade between Member States and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, then the draft measure shall not be adopted for a further two months. This period may not be extended. **The Commission shall inform other national regulatory authorities of its reservations in such a case.**

(11) *The Community mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power has contributed significantly to a consistent approach in identifying the circumstances in which ex-ante regulation may be applied and the operators are subject to such regulation. [...] Monitoring of the market by the Commission and, in particular, the experience with the procedure under Article 7 of the Framework Directive, has shown that inconsistencies in the national regulatory authorities' application of remedies, even under similar market conditions, **could** undermine the internal market in electronic communications [...]. [...] Therefore the Commission may participate in ensuring a higher level of consistency in the application of remedies by issuing opinions on draft measures proposed by national regulatory authorities. In order to [...] benefit from the expertise of national regulatory authorities on the market analysis, the Commission should consult the GERT prior to its decision.*

5. Within [...] the two-month period referred to in paragraph 4, the Commission may
- (a) take a decision in relation to the draft measure referred to in paragraph 4(a) and 4(b) requiring the national regulatory authority concerned to withdraw the draft measure, and/or
 - (b) issue an opinion⁹ in relation to the draft measure referred to in paragraph 4(c), or
 - (c) take a decision to lift its reservations in relation to the draft measure referred to in paragraph 4.

The Commission shall take utmost account of the opinion of the GERT before issuing a decision and/or issuing an opinion. [...] The decision and/or opinion shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

6. Within six months of the Commission issuing a decision in accordance with paragraph 5(a) requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

⁹ MT, UK, SE and DK have a reservation on the term "opinion".

(12) *It is important that the regulatory framework is implemented in a timely manner. When the Commission has taken a decision requiring a national regulatory authority to withdraw a planned measure, national regulatory authorities should submit a revised measure to the Commission. A deadline should be laid down for the notification of the revised measure to the Commission under Article 7 of the Framework Directive in order that market players may know the duration of the market review and in order to increase legal certainty.*

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, **the GERT** and the Commission and may, except in cases covered by paragraph 4(a) and (b), adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

Where the national regulatory authority decides to amend the draft measure according to the opinion issued under paragraph 5(b), it shall, within six months of the Commission issuing the opinion, undertake a public consultation in accordance with the procedures referred to in Article 6 and communicate the amended measure to the Commission.

Where the national regulatory authority decides not to amend the draft measure on the basis of the opinion issued under paragraph 5(b), it shall also publish the reasons justifying its decision and shall communicate them to the Commission within six months.

Recital (13) is deleted.

8. **The national regulatory authority shall communicate to the Commission and the GERT all final measures which fall under conditions a) and b) in Article 7(3).**

9. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, [...] the other national regulatory authorities, **and the GERT**. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

Article 7a
Notifications

1. After public consultation and consultation with national regulatory authorities and taking utmost account of the opinion of the GERT, the Commission may adopt recommendations and/or guidelines in relation to Article 7 that define the form, content and level of details to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.
2. The measures referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 22(2).

(14) *Having regard to the short time limits in the Community consultation mechanism, powers should be conferred on the Commission to adopt **recommendations and/or guidelines** to simplify the procedures for exchanging information between the Commission and national regulatory authorities - for example in cases concerning stable markets, or involving only minor changes to previously notified measures - or to allow for the introduction of a notification exemption in order to streamline procedures in certain cases.*

CHAPTER III
TASKS OF NATIONAL REGULATORY AUTHORITIES

Article 8
Policy objectives and regulatory principles

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives.

Unless otherwise provided in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities [...] do likewise.

National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:

(a) ensuring that users, including disabled users, **elderly users, and users with special social needs** derive maximum benefit in terms of choice, price, and quality;

(15) *In line with the objectives of the European Charter on fundamental rights and the United Nations Convention on the Rights of the Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Community shall take account of the needs of persons with a disability in drawing up measures under Article 95 of the Treaty.*

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector [...];

(c) *deleted*

(d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

3. The national regulatory authorities shall contribute to the development of the internal market by inter alia:

(a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;

(b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;

(c) *deleted*

(d) **cooperating with each other [...]**, with the Commission **and the GERT** so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

4. The national regulatory authorities shall promote the interests of the citizens of the European Union by inter alia:

(a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);

(b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;

(c) contributing to ensuring a high level of protection of personal data and privacy;

(d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;

(e) addressing the needs of specific social groups, in particular disabled users, **elderly users and users with special social needs; [...]**

(f) ensuring that the integrity and security of public communications networks are maintained;

(g) *deleted*

4a. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non-discriminatory and proportionate regulatory principles by inter alia:

(a) promoting regulatory predictability;

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;

(c) safeguarding competition to the benefit of consumers and promoting where appropriate infrastructure-based competition;

(d) promoting efficient investment and innovation in new and enhanced infrastructures;¹⁰

(e) taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within a Member State;

(e) taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within a Member State.

¹⁰ CZ, ES and DE have a reservation on (d).

Article 8a

Strategic planning and coordination of radio spectrum policy in the Union ¹¹

- 1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union. To this end, they shall take into consideration inter alia economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of the EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and of avoiding harmful interference.**
- 2. Deleted.**
- 3. Member States shall promote the coordination of radio spectrum policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in [...] electronic communications.**
- 4. Member States shall promote the effective coordination of the EU interests in international organisations competent in radio spectrum matters. Whenever necessary for promoting this effective coordination, the Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), may propose to the European Parliament and the Council common policy objectives.**
- 5. The Commission, taking utmost account of the opinion of the RSPG, may submit legislative proposals for establishing multiannual radio spectrum policy programs.**

¹¹ FI has a reservation on Article 8a.

Management of radio frequencies for electronic communications services

1. **Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value**, Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that [...] **spectrum allocation used for electronic communications services and [...] issuing general authorisations or individual rights of use** of such radio frequencies by **competent** national [...] authorities are based on objective, transparent, non-discriminatory and proportionate criteria. **In doing so, they respect relevant` international agreements and may take public policy considerations into account.**
 2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and **in pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing, they shall act** in accordance with the Decision No 676/2002/EC (Radio Spectrum Decision).
- (16) *Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective **and taking account of the objectives of cultural diversity and of media pluralism**, and that obstacles to its efficient use are gradually withdrawn.*
- (16a) *Before a specific harmonisation measure under Decision No 676/2002/EC is proposed, impact assessments should be made by the Commission assessing the costs and benefits of the proposed measures, such as the realization of economy of scales and interoperability of services for the consumer benefit, the impact on efficiency of spectrum use, or the demand for the harmonised use in the different parts of the EU.*
- (16aa) *Although spectrum management remains within the competence of the Member States, [...] coordination and, where appropriate, harmonisation at Community level can help ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended world-wide.*

¹² UK and SE have a reservation on this article and its recitals.

- (16b) *The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the Community and globally.*
- (18) *The current spectrum management and distribution system is generally based on administrative decisions that are insufficiently flexible to cope with technological and economic evolution, in particular with the rapid development of wireless technology and the increasing demand for bandwidth. The undue fragmentation amongst national policies results in increased costs and lost market opportunities for spectrum users, and slows down innovation, to the detriment of the internal market, consumers and the economy as a whole. Moreover, the conditions for access to, and use of, radio frequencies may vary according to the type of operator, while electronic services provided by these operators increasingly overlap, thereby creating tensions between rights holders, discrepancies in the cost of access to spectrum, and potential distortions in the functioning of the internal market.*
- (19) *National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and does not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.*

3. [...] Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands, available for electronic communications services in accordance with their National Frequency Allocation Plan and the ITU Radio Regulations.

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of technology used for electronic communications services where this is necessary to:

- (a) avoid harmful interference,**
- (b) protect public health against electromagnetic fields,**

(ba) ensure technical quality of service,

(c) ensure maximisation of radio frequencies sharing [...],

(ca) safeguard efficient use of spectrum, or

(d) fulfil a general interest objective in accordance with paragraph 4 below.

(20) *Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users, choose the best technologies and services to apply in [...] frequency bands **available to electronic communications services as identified in national frequency allocation tables and in the ITU Radio Regulations** (hereinafter referred to as the 'principles of technology and service neutrality'). The administrative determination of technologies and services should [...] **apply when general interest objectives are at stake** and should be clearly justified and subject to regular periodic review.*

(21) *[...] **Restrictions** to the principle of technology neutrality should be [...] **appropriate** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, [...] to ensure the protection of public health by limiting public exposure to electromagnetic fields, **to ensure the proper functioning of services through an adequate level of technical quality of service**, [...] to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, **to safeguard efficient use of spectrum**, or [...] to fulfil a general interest objective in conformity with Community law.*

4. [...] Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands, available for electronic communications services in accordance with their National Frequency Allocation Plan and the ITU Radio Regulations.

The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by Member States in conformity with Community law, such as and not limited to:

- (a) safety of life,**
- (b) the promotion of social, regional or territorial cohesion,**
- (c) the avoidance of inefficient use of radio frequencies, or**
- (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.**

A measure which prohibits the provision of any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services. Member states may also extend such measure in order to fulfil other general interest objectives.

- (22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined [...] by Member States in conformity with Community law. Except where necessary to protect safety of life or to fulfil other general interest objectives, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. [...]*
- (23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism [...].*

5. Member States shall regularly review the necessity of the restrictions and measures referred to in paragraphs 3 and 4, and shall make the results of these reviews public.

(24) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.

6. Paragraphs 3 and 4 shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after [subject to the date of transposition].

Spectrum allocations, general authorisations and individual rights of use which existed at the date of [subject to the date of transposition] shall be subject to Article 9a.

7. Without prejudice to the provisions of the Specific Directives and taking into account the relevant national circumstances, Member States may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of the rights and by applying sanctions, including financial penalties or withdrawal of the rights of use in case of non-compliance with the deadlines. These rules shall be established and applied in a proportionate, non-discriminatory and transparent manner.

Article 9a

Review of restrictions to existing rights

1. For a period of five years starting on [subject to the date of transposition], Member States may ensure that holders of rights to use radio frequencies which were granted before that date and which will remain valid for a period of not less than five years after that date, may submit an application to the competent national authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Before adopting its decision the competent national regulatory authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or till the end of the 5 year period, whichever is the earlier date.

2. Deleted.

3. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining general authorisations/individual rights of use and spectrum allocations used for electronic communications services which existed at the date of [subject to the date of transposition].

4. In applying this Article, Member States shall take appropriate measures to promote fair competition.

5. Measure adopted in applying this Article do not constitute the granting of new rights of use and therefore are not subject to the relevant provisions of Article 5(2) of Directive 2002/20/EC (Authorisation Directive).

(28) The introduction of technology and service neutrality and trading for existing spectrum usage rights may require transitional rules, including measures to ensure fair competition, as the new system may entitle certain spectrum users to start competing with spectrum users having acquired their spectrum rights under more burdensome terms and conditions. [...]

Article 9b

Transfer or lease of Individual Rights to Use radio frequencies

1. [...] Member States may [...] make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings in accordance with national procedures.

Conditions attached to individual rights to use radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the competent national authority.

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies, as well as the effective transfer thereof is notified in accordance with national procedures to the competent national authority responsible for granting individual rights of use and is made public. Where radio frequency use has been harmonised through the application of the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.¹³

(25) *In the interests of flexibility and efficiency, national regulatory authorities [...] may allow spectrum users to freely transfer or lease their usage rights to third parties, which would allow spectrum valuation by the market. In view of their power to ensure effective use of spectrum, national regulatory authorities should take action so as to ensure that trading does not lead to a distortion of competition where spectrum is left unused.*

Article 9c

Radio Frequency Management Harmonisation Measures

Deleted.

Recital (26) is deleted.

Recital (27) is deleted.

Article 10

Numbering, naming and addressing

1. Member States shall ensure that national regulatory authorities control the [...] **granting of rights of use** of all national numbering resources and the management of the national numbering plans. Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services. National regulatory authorities shall establish objective, transparent and non-discriminatory [...] procedures **for granting rights of use** for national numbering resources.

¹³ UK has a reservation on paragraph 2.

2. National regulatory authorities shall ensure that **national** numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services. In particular, Member States shall ensure that an undertaking [...] **to which the right of use for a range of numbers has been granted** does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

3. Member States shall ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published, subject only to limitations imposed on the grounds of national security.

4. Member States shall support the harmonisation of [...] **specific numbers or numbering ranges** within the Community where that [...] promotes **both** the functioning of the internal market [...] **and** the development of pan-European services. The Commission may [...] take [...] appropriate technical implementing measures on this matter [...].

The Measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

5. Where this is appropriate in order to ensure full global interoperability of services, Member States shall coordinate their positions in international organisations and forums in which decisions are taken on issues relating to the numbering, naming and addressing of electronic communications networks and services.

(29) *In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be given the power **to adopt technical implementing measures in the field of numbering.** [...]*

Article 11

Rights of way

1. Member States shall ensure that when a competent authority considers:

- an application for the granting of rights to install facilities on, over or under public or private property to an undertaking authorised to provide public communications networks, or
- an application for the granting of rights to install facilities on, over or under public property to an undertaking authorised to provide electronic communications networks other than to the public,

the competent authority:

- acts on the basis of **efficient**, transparent and publicly available procedures, applied without discrimination and without delay, **and in any event makes its decision within six months of the application, except in cases of expropriation**, and
- follows the principles of transparency and non-discrimination in attaching conditions to any such rights.

The abovementioned procedures can differ depending on whether the applicant is providing public communications networks or not.

(30) *Permits issued to undertakings providing electronic communications networks and services allowing them to gain access to public or private property are essential factors for the establishment of electronic communications networks or new network elements. Unnecessary complexity and delay in the procedures for granting rights of way may therefore represent important obstacles to the development of competition. Consequently, the acquisition of rights of way by authorised undertakings should be simplified. National regulatory authorities should be able to coordinate the acquisition of rights of way, making relevant information accessible on their websites.*

2. Member States shall ensure that where public or local authorities retain ownership or control of undertakings operating **public** electronic communications networks and/or **publicly available electronic communications** services, there is effective structural separation of the function responsible for granting the rights referred to in paragraph 1 from activities associated with ownership or control.

3. Member States shall ensure that effective mechanisms exist to allow undertakings to appeal against decisions on the granting of rights to install facilities to a body that is independent of the parties involved.

Article 12

Co-location and [...] sharing of network elements and associated facilities for providers of electronic communications networks

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall [...] **be able to impose** the sharing of such facilities or property, **including inter alia buildings or entries to buildings, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets, as well as network elements which are not active.**

2. [...] **Member States may require holders of the rights referred to in paragraph 1 to share facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order** to protect the environment, public health, public security or to meet town and country planning objectives [...] **only after an appropriate period of public consultation, during which all interested parties [...] shall be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.**

2a. **Member States may, where appropriate, ensure that undertakings provide the necessary information, if requested by the competent authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.**

3. **Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, non-discriminatory, and proportionate.**

- (31) *It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in [...] a fair, efficient and environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. **Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings, notably of new [...] access networks. National regulatory authorities should be empowered to require that the holders of the rights to install facilities on, over or under public or private property share such facilities or property (including physical co-location) in order to encourage efficient investment in infrastructure and the promotion of innovation, after an appropriate period of public consultation, during which all interested parties shall be given the opportunity to state their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing and shall ensure that there is an appropriate rewarding of risk between the undertakings concerned. National regulatory authorities should in particular be able to impose [...] the sharing of network elements and associated facilities [...], such as ducts, conduits, masts, manholes, cabinets, [...] antennae, towers and other supporting constructions, buildings or [...] entries into buildings, and a better coordination of civil works. [...] The competent authorities, notably local authorities, should also establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to public works and also to other appropriate public facilities or property which may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and on-going and planned public works, that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible.***

Article 13

Accounting separation and financial reports

1. Member States shall require undertakings providing public communications networks or publicly available electronic communications services which have special or exclusive rights for the provision of services in other sectors in the same or another Member State to:
 - (a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or

(b) have structural separation for the activities associated with the provision of electronic communications networks or services.

Member States may choose not to apply the requirements referred to in the first subparagraph to undertakings the annual turnover of which in activities associated with electronic communications networks or services in the Member States is less than EUR 50 million.

2. Where undertakings providing public communications networks or publicly available electronic communications services are not subject to the requirements of company law and do not satisfy the small and medium-sized enterprise criteria of Community law accounting rules, their financial reports shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant Community and national rules.

This requirement shall also apply to the separate accounts required under paragraph 1(a).

CHAPTER III A
SECURITY AND INTEGRITY OF NETWORKS AND SERVICES

Article 13a

Security and integrity

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to appropriately manage risk to security of networks and services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of security incidents on users and on interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take all appropriate steps to ensure the integrity of their networks, and thus ensure the continuity of supply of services provided over those networks.

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the competent national regulatory authority of a breach of security or loss of integrity that had a significant impact on the operation of networks or services.

The national regulatory authority concerned shall inform the national regulatory authorities in other Member States and the European Network and Information Security Agency (ENISA) if other Member States could be or have been affected. The national regulatory authority concerned may inform the public or require the undertakings to do so, where it determines that disclosure of the breach is in the public interest.

Once a year, the national regulatory authority concerned shall submit a summary report to the Commission and ENISA on the notifications received and the action taken in accordance with this paragraph.

4. The Commission, taking the utmost account of the opinion of ENISA, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements. These technical implementing measures will be based on European and international standards to the greatest extent possible, and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3). [...]

- (32) *Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure the integrity and security of public communications networks are maintained. The **ENISA [...]** should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both the **ENISA [...]** and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed risks, taking into account the state of the art of such measures.*
- (33) *Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in the internal market. The **ENISA [...]** should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.*

Article 13b

Implementation and enforcement

- 1. Member States shall ensure that competent national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.**
- 2. Member States shall ensure that competent national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:**
 - (a) provide information needed to assess the security and integrity of their services and networks, including documented security policies; and**
 - (b) submit to a security audit carried out by a qualified independent body or a competent national authority and make results thereof available to the national regulatory authority. The cost of the audit shall be paid by the undertaking.**
- 3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance.**
- 4. These provisions shall be without prejudice to Article 3 of this Directive.**

CHAPTER IV GENERAL PROVISIONS

Article 14

Undertakings with significant market power

1. Where the Specific Directives require national regulatory authorities to determine whether operators have significant market power in accordance with the procedure referred to in Article 16, paragraphs 2 and 3 of this Article shall apply.
2. An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

In particular, national regulatory authorities shall, when assessing whether two or more undertakings are in a joint dominant position in a market, act in accordance with Community law and take into the utmost account the guidelines on market analysis and the assessment of significant market power published by the Commission pursuant to Article 15. Criteria to be used in making such an assessment are set out in Annex II.

3. Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking. **Consequently, remedies aimed at preventing such leverage may be applied in the linked market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/21 (Access directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.**

Recital (34) is deleted.

Article 15

Procedure for [...] identification and definition [...] of markets

1. After public consultation and consultation **with national regulatory authorities and taking the utmost account of the opinion of the GERT, [...]** the Commission shall **in accordance with the procedure referred to in Article 22(2)** adopt a Recommendation on Relevant Product and Service Markets (hereinafter "the Recommendation"). The Recommendation shall identify [...] those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall regularly review the recommendation.¹⁴

2. The Commission shall publish, at the latest on the date of entry into force of this Directive, guidelines for market analysis and the assessment of significant market power (hereinafter "the guidelines") which shall be in accordance with the principles of competition law.

3. National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those [...] **identified** in the Recommendation.

4. After consultation with national regulatory authorities the Commission may, **taking the utmost account of the opinion of the GERT, [...]** adopt a Decision identifying transnational markets, **acting in accordance with the procedure referred to in Article 22(2a).**

¹⁴ NL has a reservation on this Article.

Article 16

Market analysis procedure

1. [...] National regulatory authorities shall carry out an analysis of the relevant markets **taking into account the markets identified in the Recommendation, and** taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.
2. Where a national regulatory authority is required under [...] **paragraphs 3 or 4, Article 17** [...] of Directive 2002/22/EC (Universal Service Directive), or Article [...] 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.
3. Where a national regulatory authority concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations referred to in paragraph 2 of this Article. In cases where sector specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that relevant market. An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations.
4. Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings **which individually or jointly with others have a [...]** significant market power on that market in accordance with Article 14 and the national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations referred to in paragraph 2 of this Article or maintain or amend such obligations where they already exist.
5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the Guidelines and decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article in a concerted fashion.

Recital (35) is deleted.

6. Measures taken according to the provisions of paragraphs 3, **and 4 [...]** of this Article shall be subject to the procedures referred to in Articles 6 and 7. **National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 7:**

- a) **within three years from the adoption of a previous measure relating to that market. However, exceptionally, that period may be extended beyond three years, where the NRA has notified a reasoned proposed extension to the Commission and the Commission has not objected within one month of the notified extension;**
- b) **for markets not previously notified to the Commission, within two years from the adoption of a revised Recommendation on relevant markets, or;**
- c) **for Member States which have newly joined the Union, within two years from their accession.**

7. **Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in Article 16(6), the GERT shall provide assistance to the national regulatory authority concerned on its request in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the national regulatory authority concerned shall within six months notify the draft measure to the Commission in accordance with Article 7.**

(36) *In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary. It is important to conduct a market analysis on a regular basis and within a reasonable and appropriate timeframe. The timeframe should take account of whether the particular market has previously been subject to market analysis and duly notified. Failure of a national regulatory authority to analyse a market within the time limit may jeopardise the internal market, and normal infringement proceedings may not produce their desired effect in time. [...] Alternatively, the NRA concerned should be able to request the assistance of the GERT to complete the market analysis. For instance, this assistance could take the form of a specific task force composed of other NRAs representatives.*

Article 17

Standardisation

1. The Commission, acting in accordance with the procedure referred to in Article 22(2), shall draw up and publish in the Official Journal of the European Communities a list of standards and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services. Where necessary, the Commission may, acting in accordance with the procedure referred to in Article 22(2a) and following consultation of the Committee established by Directive 98/34/EC, request that standards be drawn up by the European standards organisations (European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (CENELEC), and European Telecommunications Standards Institute (ETSI)).

2. Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

As long as standards and/or specifications have not been published in accordance with paragraph 1, Member States shall encourage the implementation of standards and/or specifications adopted by the European standards organisations.

In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), **the Electronic Communications Committee (ECC)**, the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC).

Where international standards exist, Member States shall encourage the European standards organisations to use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts would be ineffective.

3. If the standards and/or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards and/or specifications may be made compulsory under the procedure laid down in paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.
4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the Official Journal of the European Communities and invite public comment by all parties concerned. The Commission [...] shall **take appropriate implementing measures and** make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards and/or specifications published in the Official Journal of the European Communities.
5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in accordance with the procedure referred to in Article 22(2a), remove them from the list of standards and/or specifications referred to in paragraph 1.
6. Where the Commission considers that standards and/or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, [...] **take the appropriate implementing measures and** remove [...] **those standards and/or specifications** from [...] **the** list of standards and/or specifications referred to in paragraph 1.
- 6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it referred to in paragraphs 4 and 6 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).**
7. This Article does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the provisions of Directive 1999/5/EC apply.

Article 18

Interoperability of digital interactive television services

1. In order to promote the free flow of information, media pluralism and cultural diversity, Member States shall encourage, in accordance with the provisions of Article 17(2):

(a) providers of digital interactive television services for distribution to the public in the Community on digital interactive television platforms, regardless of the transmission mode, to use an open API;

(b) providers of all enhanced digital television equipment deployed for the reception of digital interactive television services on interactive digital television platforms to comply with an open API in accordance with the minimum requirements of the relevant standards or specifications;

c) providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end-users.

2. Without prejudice to Article 5(1)(b) of Directive 2002/19/ EC (Access Directive), Member States shall encourage proprietors of APIs to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive television services to provide all services supported by the API in a fully functional form.

3. Deleted.

Article 19

Harmonisation procedures

- 1. [...] Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by the national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of the GERT, if any, issue a recommendation on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.**
- 2. [...] Where the Commission, issues a recommendation pursuant to paragraph 1, it shall act in accordance with the procedure referred to in Article 22(2).**

Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasoning for its position.

- 3. The GERT may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.**

(37) Due to the a high level of technological innovation and highly dynamic markets in the electronic communications sector there is a need to be able to adapt regulation rapidly in a coordinated and harmonised way at European level, as experience shows that divergence among the national regulatory authorities in the implementation of the regulatory framework may create a barrier to the development of the internal market. [...]

Article 20

Dispute resolution between undertakings

1. In the event of a dispute [...] arising in connection with **existing** obligations [...] under this Directive or the Specific Directives [...] **between undertakings** providing electronic communications networks or services, in a Member State, [...] **or between such undertakings and other undertakings in the Member State benefiting from obligations of access and/or interconnection arising under this Directive or the Specific Directive**, the national regulatory authority concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.
2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months.
3. In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.
4. The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.

5. The procedure referred to in paragraph 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

Article 21

Resolution of cross-border disputes

1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the [...] **provisions** set out in paragraphs 2, 3 and 4 shall be applicable.

2. Any party may refer the dispute to the national regulatory authorities concerned. The **competent** national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8.

Any national regulatory authority which has competence in such a dispute may request the GERT to issue an opinion as to the action to be taken in accordance with the provisions of the Framework Directive and/or the specific Directives to resolve the dispute.

Where such a request has been made to the GERT, any national regulatory authority with competence in any aspect of the dispute shall await the GERT's opinion before taking action to resolve the dispute, without prejudice to the possibility for national regulatory authorities to take urgent measures where necessary.

Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives **and take the utmost account of the opinion issued by the GERT.**

(38) *One important task assigned to **the GERT** is to issue opinions in relation to cross-border disputes where appropriate. National regulatory authorities should therefore take account of any opinions of **the GERT** in such cases.*

3. Member States may make provision for **the competent** national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8.

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party seeking redress and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8 **and taking the utmost account of any opinion issued by the GERT.**

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

Article 21a

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the period of any breach, even if the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by the [time-limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

(39) *Experience in the implementation of the regulatory framework indicates that existing provisions empowering national regulatory authorities to impose fines have failed to provide an adequate incentive to comply with regulatory requirements. Adequate enforcement powers can contribute to the timely implementation of the regulatory framework and therefore foster regulatory certainty, which is an important driver for investment. The lack of effective powers in the event of non-compliance applies across the regulatory framework. The introduction of a new provision in the Framework Directive to deal with breaches of obligations under the Framework and Specific Directives should therefore ensure the application of consistent and coherent principles to enforcement and penalties for the whole regulatory framework.*

Article 22
Committee

1. The Commission shall be assisted by a Committee ("the Communications Committee").
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

2a. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

[...]

4. **Deleted.**

- (59) *Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁵.*
- (60) *In particular, power should be conferred on the Commission to adopt **Recommendations and/or** implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; **the identification of the Relevant Product and Service Markets**; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments [...]. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. [...]*

¹⁵ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Article 23

Exchange of information

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations.
2. The Communications Committee shall, taking account of the Community's electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

Article 24

Publication of information

1. Member States shall ensure that up-to-date information pertaining to the application of this Directive and the Specific Directives is made publicly available in a manner that guarantees all interested parties easy access to that information. They shall publish a notice in their national official gazette describing how and where the information is published. The first such notice shall be published before the date of application referred to in Article 28(1), second subparagraph, and thereafter a notice shall be published whenever there is any change in the information contained therein.
2. Member States shall send to the Commission a copy of all such notices at the time of publication. The Commission shall distribute the information to the Communications Committee as appropriate.

Article 25

Review procedures

The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 28(1), second subparagraph. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay.

CHAPTER V

FINAL PROVISIONS

Article 26

Repeal

The following Directives and Decisions are hereby repealed with effect from the date of application referred to in Article 28(1), second subparagraph:

- Directive 90/387/EEC,
- Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number,
- Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines,
- Council Decision 92/264/EEC of 11 May 1992 on the introduction of a standard international telephone access code in the Community,
- Directive 95/47/EC,
- Directive 97/13/EC,
- Directive 97/33/EC,

- Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment.

Article 27

Transitional measures

Deleted.

- (40) *The existing regulatory framework included certain provisions to facilitate the transition from the old regulatory framework of 1998 to the new 2002 framework. This transition has been completed in all Member States and these measures should be repealed as they are now redundant.*

[Article 28

Transposition

Article 29

Entry into force

Article 30

Addressees]

ANNEX I

Deleted.

- (41) Annex I to the Framework Directive identified the list of markets to be included in the Recommendation on relevant product and service markets which may warrant ex-ante regulation. This Annex should be repealed since its purpose of serving as a basis for drawing up the initial version of the Recommendation¹⁶ has been fulfilled.

ANNEX II

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph.

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power. In accordance with the provisions on joint dominance set in the Regulation (EC) N° 139/2004 of 20 January 2004, this is likely to be the case where the market is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications:

¹⁶ Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services - C(2003) 497.

- low elasticity of demand
- similar market shares
- high legal or economic barriers to entry
- vertical integration with collective refusal to supply
- lack of countervailing buyer power
- lack of potential competition

The above is an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance.

Recital (42) is deleted.
